

Via Electronic Website Submission

March 10, 2017

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
Phone: (202) 566-1667 Fax: (202) 566-2147

**Re: Freedom of Information Act request -- Notice of Violation for Fiat Chrysler Model Year 2014-16 diesel light-duty vehicles**

Dear FOIA Officer:

This is a request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the United States Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100, *et seq.* This request is made on behalf of the Sierra Club. This request is not for commercial use.

Sierra Club is the nation's oldest grassroots organization. It has more than 2.7 million members and supporters nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

**Records Requested**

This FOIA request seeks records from the EPA Office of Enforcement and Compliance Assurance and each EPA region including but not limited to:

1. The Notice of Violation for Model Year 2014-2016 diesel light-duty vehicles (Dodge Ram and Jeep Grand Cherokee) issued to Fiat Chrysler on January 12, 2017.
2. Any and all correspondence, documents, and data considered in issuing the above referenced NOV.
3. Any and all administrative subpoenas issued under the Clean Air Act § 307; 42 U.S.C. § 7607 power relating to Fiat Chrysler's use of defeat devices.
4. Any and all information related to, or correspondence conducted in the course of, investigation into Fiat Chrysler's possible violations of 42 U.S.C. § 7522(a)(3)(B); CAA

§ 203(a)(3)(B).

5. Any and all correspondence, documents, and data produced in preparation of and in response to such requests.
6. Any and all other information, data, documents, or correspondence relating to Fiat Chrysler Model Year 2014-2016 diesel light-duty vehicles and the NOV.
7. Fiat Chrysler's initial, and any subsequent, applications for certificates for conformity for model year 2014-2016 diesel light-duty vehicles.
8. Any certificates of conformity issued for these vehicles.
9. Any and all data inspected, obtained, or collected and any subsequent reports pursuant to Clean Air Act § 208 concerning the above referenced vehicles.
10. Any additional information relevant to the use of Auxiliary Emission Control Devices (AECDs) by Fiat Chrysler for Model Year 2014-2016 diesel light-duty vehicles.

### **Claims of Exemption from Disclosure**

If you regard any documents as exempt from required disclosure under the Freedom of Information Act, please exercise your discretion to disclose them nevertheless, keeping in mind that FOIA “is the most prominent expression of a profound national commitment to ensuring an open Government” and that “[a]ll agencies should adopt a presumption in favor of disclosure.” President Barack Obama, Memorandum For the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4, 863 (Jan. 26, 2009).

In the alternative, after careful review for the purpose of determining whether any of the information is exempt from disclosure, please provide all reasonably non-exempt portions of records and communications as required by FOIA.

Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA’s decision. In accordance with the minimum requirements and regulations of due process, this information should include:

Basic factual material, including the originator, date, length, general subject matter, and addresses of the withheld items.

Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to

exemption, and how each exemption applies to the withheld material.

### **Request for Fee Waiver**

This request meets the case-by-case requirements for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107. Each of the six factors which must be met to satisfy an EPA fee waiver request are discussed as follows:

***Factor 1. The subject of the request:*** *Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.*

This request seeks information regarding the above referenced Notice of Violation, information collected as part of the investigation, and any correspondence regarding the Fiat Chrysler's violations of the Clean Air Act . The documents sought are clearly identifiable enforcement records issued as part of EPA's primary operations and responsibilities related to enforcement and compliance assurance.

***Factor 2. The informative value of the information to be disclosed:*** *Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.*

The principal purpose of this request is to better understand EPA's enforcement policies and mechanisms, as well as their effectiveness in resolving potential violations, and to inform the public accordingly. Appropriate identification and selection of potential violators for enforcement is a key component of compliance assurance; timely prosecution and resolution of such matters is equally important, to the regulated community as well as human health and the environment. Understanding how this process works, and whether it works timely, will help the public and elected officials better evaluate the effectiveness and efficiency of federal environmental regulatory programs. This information is not already in the public domain.

***Factor 3. The contribution to an understanding of the subject by the public is likely to result from disclosure:*** *Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.*

As stated above, the information requested is sought to better understand key aspects, including timely resolution of identified violations, of EPA's enforcement and compliance program. The Sierra Club is a non-profit entity engaged in educating the public about environmental issues and/or taking legal or other actions necessary to ensure compliance with federal environmental laws. The requestor intends to convey this information to the public, including citizens, elected officials, policy makers, and the regulated community, in reports, position papers, interactions with the press, and other means of distribution. The Sierra Club uses their expertise to gather and publicly distribute information related to human health and the environment in a manner that is clear, transparent, and accurate.

***Factor 4. The significance of the contribution to public understanding:*** *Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced significantly by the disclosure. The FOI Office will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.*

The Sierra Club intends to analyze the information sought and distribute such analysis in a transparent manner to the public. There is no online documentation of the degree or severity of Fiat Chrysler's actions to circumvent emission standards. Thus, this information is not readily available to the public. The Sierra Club will organize and analyze this information and disseminate in a way that will significantly increase the public's understanding of how EPA conducts its enforcement and compliance assurance efforts.

***Factor 5. The existence and magnitude of a commercial interest:*** *Whether the requester has a commercial interest that would be furthered by the requested disclosure. The FOI Office will consider any commercial interest of the requester or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.*

The information delivered in response to this request will not be used for any commercial purpose, business, trade, or profit. The Sierra Club is a public interest organization and does not have a commercial interest in this material.

***Factor 6. The primary interest in disclosure:*** *Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. FOI Offices ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest*

*will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.*

This factor is satisfied because the Sierra Club does not have any commercial interest in disclosing the records sought.

For the above reasons, this request satisfies the fee waiver standards set forth in 40 C.F.R. § 2.107. However, in the event that EPA does not grant the requested waiver, please provide information concerning the specific basis for such a decision as required by EPA regulations as well as an estimate of the cost of the agency's response.

In accordance with the FOIA Improvement Act of 2016, please provide responsive documents in an electronic format. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

Thank you for your prompt attention to this matter. Should you need further information concerning this request, please do not hesitate to call me at (202) 675-6273 or email me at [josh.stebbins@sierraclub.org](mailto:josh.stebbins@sierraclub.org).

Respectfully Submitted,

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